1761

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	§	
Vivian A. Schramm	§	
Michael R. Schramm	§	Group Art Unit: 1761
	§	
Serial No.: 09/707,156	§	Examiner: Steven L.
	§	Weinstein
Filed: November 06, 2000	§	
	§	
For: Spill-Proof Candy Container		

SUMMARY OF EXAMINERS INTERVIEW HELD ON FEBRUARY 1, 2005

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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Michael R. Schramm — **February 14, 2005**
Applicant — **Date**
Michael R. Schramm
Signature

Sir:

Applicants hereby file this summary of an examiner's interview held via telephone between examiner Steven L. Weinstein and applicant Michael R. Schramm on February 1, 2005.

SUMMARY

The applicant asked the examiner in effect why the applicant's explanation as to why new matter was not added was not persuasive. The examiner stated in effect that his position was that because the applicant used language that was not in the original specification (i.e. "edible fluent non-gaseous material"), and because the select language could include matter not described in the specification, (i.e. liquid), that such language was considered new matter. The applicant explained in effect that even though the select language was not in the original specification, because the specification supported the resultant structure defined by the select language, that use of the select

language should not be considered new matter regardless of how many additional structures could potentially be described by such select language.

The applicant asked the examiner in effect, why on the one hand could claims of the application be rejected under double patenting of applicant's prior patents and yet on the other hand, the applicant was not entitled to the benefit of the filing date of applicant's prior patents due to the claims not being supported by the prior patents. The applicant expressed thoughts to the effect that such rejection and disallowance of filing date benefit ought not to be able to be simultaneously imposed. The examiner explained in effect that the double patenting rejection was based on the scope of the respective claims and that depending on the effect of an amendment to the scope of the claims, that claims may or may not yet be able to be allowed. The examiner further explained in effect that because applicant's prior patents did not support the current claims, that the benefit of the filing date of the earlier filed patents could not be granted. The examiner also noted in effect that if at least one claim were to be amended or added that is supported by the applicant's prior patents, then benefit of the filing date of applicant's prior patents may be grantable. The applicant asked the examiner in effect if he could reference the law or statue that specifically imposed such requirement and if it was 35 USC § 120 and § 112. The examiner responded in effect that he could not immediately recall the specific reference but that he believed such to be the law. The applicant made reference to MPEP 201.08 and stated in effect that it was his understanding that in order for a CIP to be a CIP that it only needed to repeated some substantial part of a prior application and that the claims of the new application needn't be supported by the prior application in order to claim the benefit of the prior filing date. The applicant asked the examiner in effect that if he was not to be granted the filing date of the earlier applications, could the applicant accordingly revise the specification to not claim the benefit of the filing date of the earlier applications and thus not unduly reduce the term of any potential patent that may issue from the current application. The examiner stated in effect that he did not know but that the applicant could look up the answer to the question. The applicant indicated in effect that rather than look up the answer, he would likely simply include such amendment to the specification in the next office action response and that he would let the examiner address the issue when he receives the response.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call Michael R. Schramm at 801-625-9268 (wk) or at 435-734-2599 (hm).

DATE: February 14, 2005 Respectfully submitted,

Vivian A. Schramm

Michael R. Schramm